

Introduced by Senator Ortiz

February 21, 2003

An act to amend Section 3040 of, and to add Section 3100.5 to, the Family Code, relating to child custody.

LEGISLATIVE COUNSEL'S DIGEST

SB 734, as introduced, Ortiz. Child custody and visitation.

Existing law requires a court to consider, among other factors, which parent is more likely to allow the child frequent and continuing contact with the noncustodial parent in making an order granting custody to either parent, as specified.

This bill would revise that provision to require a court to consider, among other factors, which parent is more likely to allow the child frequent and continuing contact with noncustodial parent who has not committed abuse, as defined, in making that order.

Existing law requires a court to consider, when there is a protective order that has been directed to a parent, whether the best interest of the child requires that any visitation by a parent be supervised, suspended, or denied.

This bill would require a court to impose supervised visitation when the court has granted visitation to a parent or other individual, and when the court determines that it is necessary to protect the child from risk of harm due to physical or sexual abuse, neglect, substance abuse by a parent or a member of the parent's household, or domestic violence perpetrated by that parent or individual.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 3040 of the Family Code is amended to read:

3040. (a) Custody should be granted in the following order of preference according to the best interest of the child as provided in Sections 3011 and 3020:

(1) To both parents jointly pursuant to Chapter 4 (commencing with Section 3080) or to either parent. In making an order granting custody to either parent, the court shall consider, among other factors, which parent is more likely to allow the child frequent and continuing contact with ~~the~~ a noncustodial parent *who has not committed abuse, as defined in Section 6203*, consistent with Section 3011 and 3020, and shall not prefer a parent as custodian because of that parent's sex. The court, in its discretion, may require the parents to submit to the court a plan for the implementation of the custody order.

(2) If to neither parent, to the person or persons in whose home the child has been living in a wholesome and stable environment.

(3) To any other person or persons deemed by the court to be suitable and able to provide adequate and proper care and guidance for the child.

(b) This section establishes neither a preference nor a presumption for or against joint legal custody, joint physical custody, or sole custody, but allows the court and the family the widest discretion to choose a parenting plan that is in the best interest of the child.

SEC. 2. Section 3100.5 is added to the Family Code, to read:

3100.5. The court shall impose supervised visitation when the court has granted visitation to a parent or individual and the court has determined that supervised visitation is necessary to protect the child from risk of harm due to physical or sexual abuse, neglect, substance abuse by a parent or member of the parent's household, or domestic violence perpetrated by that parent or individual.